



duty assignments from November 30, 2000 to the present. Appellant's assignments involved opening new stores and correcting problems in existing stores which required long work hours. She had a staff shortage and was required to handle personnel matters. Appellant alleged that she did not receive support from supervisors and was treated in a demeaning manner by them.

By decision dated August 28, 2002, the Office denied appellant's claim. It found that she failed to establish that she sustained an emotional condition while in the performance of duty. The Office determined that appellant had not established any compensable factors of her employment. It found that her allegations involved administrative and personnel matters and she did not establish that the employing establishment erred or acted abusively in handling these matters.

By letter dated September 25, 2002, appellant requested an oral hearing before an Office hearing representative. In an August 20, 2003 decision, an Office hearing representative affirmed the August 28, 2002 decision. She found that appellant failed to submit evidence establishing that the employing establishment erred or acted abusively in handling the administrative and personnel matters she alleged.

By decisions dated August 2 and December 21, 2005 and June 1, 2006, the Office denied modification of the prior decisions. The evidence submitted by appellant was found insufficient to establish error or abuse by the employing establishment in handling the alleged administrative and personnel matters.

In a letter dated December 19, 2006, appellant, through counsel, requested reconsideration. In an August 22, 2006 medical report, Dr. James L. Vosberg, a Board-certified internist, noted appellant's emotional and physical symptoms, a history that she had a demanding job at the employing establishment, her medical treatment and personal stressors. He stated that a transfer order to move to Biloxi, Mississippi was more than appellant could handle. Appellant's depression markedly worsened and she was not capable of performing her work duties. Dr. Vosberg recommended that appellant take a medical leave of absence from work. He opined that her demanding job was the primary source of her anxiety and eventual depression. An August 27, 2006 medical report of Dr. Cynthia L. Hoyler, a Board-certified psychiatrist, found that appellant's emotional problems would not have escalated if the employing establishment had provided her with appropriate accommodations and decreased its travel demands. A September 29, 2006 letter from F. John Sherwood, a licensed professional counselor and licensed marriage and family therapist, explained why appellant was referred to him by Dr. Hoyler, whether he made reports to Dr. Hoyler and prescribed medication to appellant and who determined whether appellant received treatment from him. Mr. Sherwood described the duties of a licensed professional counselor. He reported appellant's physical and emotional problems. Mr. Sherwood opined that an increased and accelerated travel schedule imposed on appellant was the primary factor that caused her health to deteriorate which resulted in her medical disability. The *curriculum vitae* of Dr. Vosberg, Dr. Hoyler and Mr. Sherwood noted, among other things, their education and professional work experience.

On March 28, 2007 the Office denied appellant's request for reconsideration. It found that the evidence submitted was of a duplicative and irrelevant nature and, thus, it was insufficient to warrant a merit review of the Office's prior decisions.

## LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>1</sup> the Office's regulation provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>2</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>3</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

## ANALYSIS

By letter dated December 19, 2006, appellant disagreed with the Office's decisions which denied her claim for an emotional condition after finding that she had not established a compensable employment factor. The relevant issue in this case is the factual question of whether appellant has established a compensable factor of employment.

In support of her request for reconsideration, appellant submitted medical reports of Dr. Vosberg and Dr. Hoyler and a letter of Mr. Sherwood which found that her emotional condition was caused by her employment. Dr. Vosberg stated that a transfer order to move to Biloxi, MS, caused appellant's depression to markedly worsen and rendered her totally disabled for work. Dr. Hoyler opined that appellant's emotional condition would not have been aggravated if the employing establishment had provided her with appropriate accommodations and decreased its travel demands. Mr. Sherwood stated that an increased and accelerated travel schedule imposed on appellant was the primary cause of the deterioration of her emotional condition and resultant disability. The Office, however, is not required to consider medical evidence in an emotional condition case where no work factors have been established.<sup>4</sup> The medical reports are not relevant to the underlying issue in this case which is whether appellant established a compensable employment factor. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>5</sup>

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant

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<sup>1</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>3</sup> *Id.* at § 10.607(a).

<sup>4</sup> *See Richard Yadron*, 57 ECAB \_\_\_\_ (Docket No. 05-1738, issued November 8, 2005).

<sup>5</sup> *Patricia G. Aiken*, 57 ECAB \_\_\_\_ (Docket No. 06-75, issued February 17, 2006).

legal argument not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that the Office properly denied merit review.<sup>6</sup>

**CONCLUSION**

The Board finds that the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 28, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 26, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> See *James E. Norris*, 52 ECAB 93 (2000).